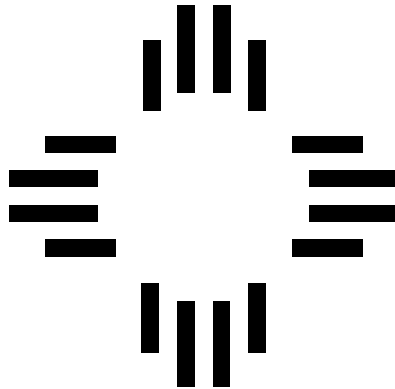


New Mexico Register

Volume XIII, Issue Number 14
July 31, 2002



The official publication for all notices of rulemaking and filings of
adopted, proposed and emergency rules in New Mexico

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Administrative Law Division
2002

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New Mexico Register

Volume XIII, Number 14

July 31, 2002

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Adopted Rules and Regulations

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." 14-4-5 NMSA 1978.

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Please note that the (*) entries obey the reformatting rules set forth in 1.24.10 NMAC, effective 2/29/00

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Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail rules@rain.state.nm.us.

Notices of Rulemaking and Proposed Rules

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

PUBLIC ACCOUNTANCY BOARD NOTICE OF PUBLIC HEARING AND PROPOSED RULEMAKING

The New Mexico Public Accountancy Board ("Board") will convene on Friday, August 23, 2002. The meeting will be held at 9:00 a.m. in the Real Estate Commission Board Room, 1650 University Blvd. NE, Suite 490, Albuquerque, New Mexico. Notice of the meeting is given in accordance with the Board's Open Meeting policy. At the beginning of the meeting, a public hearing will be held for the purpose of affording members of the public the opportunity to offer comments on proposed amendments to two existing rules.

The Board staff will recommend that the Board adopt amendments to the following sections:

NMAC NUMBER	RULE NAME	SECTION TO BE AMENDED
16.60.2 NMAC	Certified Public Accountant (CPA) Examination Requirements	16.60.2.12, CPA Examination Cheating
16.60.3 NMAC	Licensure and Continuing Professional Education Requirements	16.60.3.13, Reciprocity Requirements

Notice of the hearing has been published in the Albuquerque Journal. Interested parties may access the proposed amendments on the Board's website at www.rld.state.nm.us/b&c/accountancy. Copies may also be obtained by contacting the board office at (505) 841-9108, extension 13. Written comments regarding the proposed rulemaking should be directed to Mr. Daniel Johnson, Executive Director, Public Accountancy Board, 1650 University Blvd. NE, Suite 400A, Albuquerque, New Mexico, 87102 or faxed to (505) 841-9101. Comments must be received by 5:00 p.m. on August 19, 2002; however the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting should contact the Board office at (505) 841-9108 by 5:00 p.m. on August 16, 2002.

NEW MEXICO DEPARTMENT OF AGRICULTURE

Notice of Hearing

The South Central New Mexico Cotton Boll Weevil Control District will hold a public hearing under the Cotton Boll Weevil Control Act, 76-6A-1 to 76-6A-16, NMSA 1978, to consider reducing the assessment rate for cotton grown in the district. The hearing will be held in the conference room at the New Mexico Department of Agriculture, located at 3190 South Espina (corner of Gregg and Espina), Las Cruces, New Mexico, beginning at 3:00 p.m. on August 22, 2002. Written statements in support or opposition, signed by the submitting person, will be accepted if received prior to 5:00 p.m. on August 23, 2002. Written statements, inquiries, or requests for copies of the rule should be directed to Joe Friesen, 270 South 17th Street, Las Cruces, New Mexico 88005.

NEW MEXICO DEPARTMENT OF AGRICULTURE

Notice of Hearing

The New Mexico Department of Agriculture will hold a public hearing under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9, NMSA 1978, to revise 21 NMAC 17.32 Cotton Boll Weevil

Emergency Action. It is proposed to expand this rule to encompass all cotton pest control districts that are established under statute [sic] to control or eradicate cotton pests, such as cotton boll weevil, pink bollworm, and any other cotton pest as deemed necessary. The hearing will be held in the conference room at the New Mexico Department of Agriculture, located at 3190 South Espina (corner of Gregg and Espina), Las Cruces, New Mexico, beginning at 4:00 p.m. on August 22, 2002. Written statements in support or opposition, signed by the submitting person, will be accepted if received prior to 12:00 noon on August 23, 2002. Written statements, inquiries, or requests for copies of the rule should be directed to Sherry Sanderson, MSC 3BA, Box 30005, Las Cruces, New Mexico 88003 or at (505) 646-3207.

ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD (AQCB) NOTICE OF HEARING AND REGULAR MEETING

On September 11, 2002, at 5:15 PM, the Albuquerque/Bernalillo County Air Quality Control Board (Board) will hold public hearings in the Council/Commission Chambers of the Albuquerque/Bernalillo

County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102.

These hearings will address:

- Proposal to incorporate the majority of Board Regulations recodified on May 8th, 2002 into the New Mexico State Implementation Plan (SIP) for air quality.
- Proposed new rule 20.11.104 NMAC, Motor Vehicle Idling.
- Proposal to incorporate the new rule 20.11.104 NMAC into the SIP.

The purpose of the first hearing is to receive testimony on the proposal to incorporate the recently reformatted regulations into the SIP. The purpose of the second hearing is to receive testimony on the proposed new rule that would limit idling time of vehicles which would reduce the pollution load in our air shed, including: ozone, volatile organic carbons, nitrogen oxides, particulate matter (PM10), and carbon monoxide. Immediately after the Part 104 hearing closes, another hearing will be held to receive testimony on whether the adopted regulation should become part of the New Mexico SIP.

The Air Quality Control Board is the federally delegated air authority for Albuquerque and Bernalillo County. Local delegation authorizes the Board to administer and enforce the Federal Clean Air Act and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards.

Immediately following the three hearings, during the Board's regular meeting, the Board may proceed to adopt the regulation and take action to approve the new regulation, place it into the SIP, and also approve placing the approved recodification into the SIP.

Hearings and meetings of the Board are open to the public and all interested persons are encouraged to participate. All persons wishing to testify regarding the proposed regulation and SIP action, may do so at the hearings and will be given a reasonable opportunity to submit relevant evidence, data, views, and oral arguments, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Anyone intending to present technical testimony should submit a written notice of intent to: Attn: September Hearing Record, Mr. Neal Butt, Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW, in advance of the hearing. The notice shall include:

- Name and qualifications of each technical witness;
- Identification of whether the witness is a proponent, opponent or interested party
- Description of the nature of the anticipated testimony;
- Anticipated length of each witness' presentation;
- Identification of the specific aspects of the proposed action to which testimony will be directed and provide any alternative language proposals, where appropriate;
- List and describe technical exhibits you anticipate submitting in connection with the witness' testimony.

In addition, written comments to be incorporated into the public record must be received at the above Post Office Box address, or Environmental Health Department office, before 5:00pm on September 4th, 2002, and must identify the individual submitting the statement.

Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or call Mr. Neal Butt at (505) 768-2600.

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in this meeting, please contact Mr. Neal Butt,

Environmental Health Department, Room 3023, A/BCGC, 768-2600 (Voice); 768-2617 (FAX); or 768-2482 (TTY); as soon as possible prior to the meeting date. Public documents, including agendas and minutes, can be provided in various accessible formats.

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

New Mexico Board of Examiners for Architects

PO Box 509
Santa Fe, NM
505-827-6375

Regular Meeting and Public Rules Hearing

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, August 2, 2002. The meeting will be held in the Conference Room of the Board office, Lamy Building, 491 Old Santa Fe Trail, beginning at 9:00 a.m. The rule hearing will convene at 10:00 a.m. The purpose of the rule hearing is for the amendment of board rules and regulations 16.30.1 NMAC and 16.30.3 NMAC regarding electronic signatures, change of address reporting, requirements for renewal (of expired certificates) and non-refundable fees. After the rule hearing, the regular business meeting will be reconvened, during which action may be taken on the proposed rules.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 827-6375 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

NEW MEXICO STATE BOARD OF EDUCATION

NEW MEXICO STATE BOARD OF EDUCATION NOTICE OF PROPOSED RULEMAKING

The New Mexico State Board of Education ("Board") will convene on Monday, August 19, 2002 at 8:00 a.m. The Executive Committee and the Rules of Procedure Ad Hoc Committee will meet on August 19, 2002, in Room 128 of the State Education Building, 300 Don Gaspar, Santa Fe, New Mexico. The Board will hold a meeting of the Finance, Transportation & Administration Committee on August 19, 2002, in the Old Senate Chambers, Bataan Memorial Building, Don Gaspar Street, Santa Fe, New Mexico. The Quality Educators Committee, Vocational Rehabilitation, Career Education & Adult Services Committee, Instructional Services Committee, and Accountability Committee will meet on Tuesday, August 20, 2002. The regular meeting of the Board will begin on Wednesday, August 21, 2002, at 8:00 a.m. Meetings scheduled for Tuesday, August 20, 2002 and Wednesday, August 21, 2002, will be held in the Old Senate Chambers, Bataan Memorial Building, Don Gaspar Street, Santa Fe, New Mexico. Information regarding any change in the location of the meetings, the addition of meeting days, and the agenda for the meeting, will be available at least twenty-four hours prior to the meeting from the Administrative Assistant to the State Board and on the State Board's web page of the State Department of Public Education's website (<http://sde.state.nm.us/>).

The New Mexico State Department of Public Education will recommend that the Board take action as follows:

RULE NUMBER	PROPOSED ACTION	(PROPOSED) RULE NAME
6.42.2 NMAC	Amend Rule	Transportation – School Attendance and Service Areas: Temporary Boundary Agreements ▶
6.61.8 NMAC	Amend Rule	<i>Licensure in Early Childhood Education, Birth – Grade 3 ●</i>
6 NMAC 4.2.3.11 (Proposed 6.63.5 NMAC)	Reformat and amend rule	Licensure for School Psychologists, K-12 ●

► Finance, Transportation & Administration Committee

● Quality Educators Committee
Copies of the proposed rules may be obtained from the offices of the Board Committee liaisons as follows:

► Finance, Transportation & Administration Committee – Dr. Kathleen Forrer – (505) 827-6330 or <mailto:kforrer@sde.state.nm.us>

● Quality Educators Committee – Dr. Susanna Murphy – (505) 827-3876 or <mailto:smurphy@sde.state.nm.us> ; James Ball – (505) 827-6587 or <mailto:jball@sde.state.nm.us>

Notice has been provided regarding public hearings and the submission of written comments regarding the proposed rulemaking. For specific information, please contact the Board Committee liaisons indicated above.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting, please contact the State Board of Education Office at (505) 827-6571 as soon as possible.

The Board attempts to follow the order and date of items as listed on the Agenda; however, the order and date of specific items are tentative and may vary from the printed Agenda.

Comments, questions, or requests for copies of the Agenda should be directed to Mary Jo Bradley, State Department of Education, Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 or (505) 827-6571.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED REVISION OF AIR QUALITY REGULATIONS

20.2.70 NMAC - Operating Permits

The New Mexico Environmental Improvement Board will hold a public hearing on September 13, 2002 at 9:30 a.m. at City County Government Center, One Civic Plaza, 9th Floor Committee Room (Rm. 9081), Albuquerque, New Mexico. The purpose of the hearing is to consider proposed revisions to the definition of "Major source" in 20.2.70 NMAC – *Operating*

Permits.

The proponent of this regulatory change is the New Mexico Environment Department.

EPA has announced an update to the definition of "major source" in 40CFR, Part 70, subpart 2. The effective date of this change was November 27, 2001. EPA requires that each state must revise its program and submit the revisions for EPA approval by November 27, 2002. The Department's proposal is limited to revision of the corresponding definition of this term in Title 20 of the New Mexico Administrative Code, Chapter 2, Part 70.

The proposed regulation may be reviewed during regular business hours at the office of the Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room N-2150, Santa Fe, NM, 87502. Copies of the proposed revisions may be obtained by contacting Ken Lienemann at (505) 955-8005 or Rita Trujillo at (505) 955-8024 or by visiting the Department's web site at www.nmenv.state.nm.us. Follow the links to the Air Quality Bureau's page. Written comments regarding the proposed revisions may be addressed to Mr. Lienemann or Ms. Trujillo at Air Quality Bureau, 2044 Galisteo, Santa Fe, NM, 87505. Comments or questions regarding the Department's proposed revisions Should be submitted by August 15, 2002.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures Environmental Improvement Board), the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality Control Act Section 74-2-6 NMSA 1978 and other applicable procedures.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- identify the person for whom the witness(es) will testify;
- identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background;
- summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration;
- include the text of any recommended modifications to the proposed reg-

ulatory change; and

- list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on August 30, 2002, and should reference the name of the regulation and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Geraldine Madrid Chavez, Office of the Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room N-2150, Santa Fe, NM 87505.

Any person who wishes to submit a non-technical written statement in lieu of oral testimony may do so at or before the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Cliff Hawley by August 30, 2002. Mr. Hawley's telephone number is (505) 827-2844. He is Chief of the Personnel Services Bureau, New Mexico Environment Department, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, NM 87502. (TDD or TDY users please access his number via the New Mexico Relay Network. Albuquerque TDD users: (505) 275-7333. Outside of Albuquerque: 1-800-659-1779.)

Copies of the agenda and the proposed regulations will be provided in alternative forms, e.g. audiotape, if requested by August 23, 2002.

The Board may make a decision on the proposed regulatory change at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

ss/Dr. Hilary A. Noskin, Chair

NEW MEXICO GAMING CONTROL BOARD

NOTICE OF HEARING ON PRO- POSED RULE AND AMENDMENT TO RULE

The New Mexico Gaming Control Board ("Board") will hold a public hearing at 1:30 p.m. on August 13, 2002 at the New Mexico Gaming Control Board, 6400 Uptown Blvd., N.E., Suite 100-E,

Albuquerque, New Mexico to consider proposed new rule: **15.1.26 NMAC**, *Temporary Possession of Gaming Devices by Public Post – Secondary Educational Institutions and Trade Shows* and to consider amendment to Board rule **15.1.17 NMAC**, *Schedule of Penalties under the Gaming Control Act*, Section 15.1.17.9 NMAC - *Schedule of Fines and Penalties*.

Copies of the proposed rule and amendment are available on request to the New Mexico Gaming Control Board, 6400 Uptown Blvd., N.E., Suite 100-E, Albuquerque, New Mexico, or by calling (505) 841-9733. The proposed rule and amendment are also available on our website at www.nmgcb.org. The Board can provide public documents in various accessible formats.

The hearing will be held before a hearing officer appointed by the Board. All interested parties may attend the hearing and present their views orally or submit written comments prior to the hearing. Written comments should be directed to the New Mexico Gaming Control Board, 6400 Uptown Blvd., N.E., Suite 100-E, Albuquerque, New Mexico 87110.

If you are an individual with a disability who is in need of an auxiliary aid or service to attend or participate in the proceedings, please contact Loretta Chavez, Gaming Control Board, at least one week prior to the hearing at (505) 841-9711.

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing to consider adopting revised rules in the Food Stamp Program. The hearing will be held at 9:00 a.m. on Tuesday September 3, 2002. The hearing will be held at the Income Support Division conference room, 2009 S. Pacheco St., Santa Fe, NM. The conference room is located in Room 120 on the lower level.

The Department proposes to revise Food Stamp regulations at 8.139 NMAC in order to implement the changes mandated in the FARM SECURITY AND RURAL INVESTMENT ACT OF 2002 (FARM BILL 2002). The changes are as follows:

The Department proposes to replace the current, fixed standard deduction with a deduction that varies according to household size and is adjusted annually for cost of

living increases. The new standard deduction will be effective October 1, 2002.

The Department proposes to increase the resource limit for households with a disabled member from \$2,000 to \$3,000 consistent with the limit for households with an elderly member.

The Department proposes to restore food stamp eligibility to qualified aliens who are otherwise eligible and who are receiving disability benefits regardless of date of entry. Current law requires them to have been in the country on 8/22/96.

The Department also proposes to effect the following changes:

Revise policy regarding work activities for the E & T Program including clarification of the conciliation process. Clarify voluntary quit rules as they apply to households applying for or receiving food stamps.

Effective October 1, 2002, recalculate the Standard Utility Allowance in accordance with rate information provided by utility companies.

Adjust the maximum food stamp allotment effective October 1, 2002 in accordance with FNS standards.

Remove duplicate language regarding converting income at 8.139.500.10 E. NMAC.

Assign a fixed rather than a rolling 36 month time period for ABAWDS effective December 1, 2002.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Department toll free at 1-800-432-6217, TDD 1-800-609-4TDD (4833), or through the New Mexico Relay System toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling toll free 1-800-432-6217.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 PM on the date of the hearing. Please send comments to:

Robin Dozier Otten, Deputy Secretary
Human Services Department
P.O. Box 2348 Pollon Plaza
Santa Fe, NM 87504-2348

You may send comments electronically to:
Sharon.Regensberg@state.nm.us

NEW MEXICO LIVESTOCK BOARD

NOTICE OF BOARD MEETING

NOTICE IS HEREBY GIVEN that a regular board meeting will be held on Tuesday August 6, 2002, New Mexico Livestock Board, Board Room, Albuquerque, New Mexico, at 9:00 a.m. The board will consider the long-range plan and matters of general business.

Anyone who requires special accommodations is requested to notify the New Mexico Livestock Board office at (505) 841-6161 of such needs at least five days prior to the meeting.

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

The Department proposes to adopt the following regulations:

3.2.114.8 NMAC (*Refund of Tax*) Section 7-9-26 NMSA 1978 Gross Receipt & Compensating Tax Act

3.6.5.23(C) NMAC (*Current and Correct Values of Property Defined*) Section 7-36-16 NMSA 1978 Property Tax Code

3.16.4.9 NMAC (*Deduction - Sales to Other Distributors*) Section 7-13-4 NMSA 1978 Gasoline Tax Act

3.16.4.12 NMAC (*Sales to Registered Indian Tribal Distributors*)

3.16.4.13 NMAC (*Sales to Persons Eligible for the Deduction Provided under Subsection F of Section 7-13-4 NMSA 1978*)

3.16.7.11 NMAC (*Department May Remove Noncomplying Distributors from List*) Section 7-13-7 NMSA 1978

3.16.109.13 NMAC (*Special Fuel Used in School Buses*) Section 7-16A-10 NMSA 1978 Special Fuels Supplier Tax Act

The proposed regulations were placed on file in the Office of the Secretary on July 16, 2002. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final regulations, if filed, will be filed as required by law on or about October 15, 2002.

A public hearing will be held on the proposed regulations on Monday, September 16, 2002, at 9:30 a.m. in the Secretary's Conference Room No. 3004/3138 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposed regulations are available upon request; contact (505) 827-0908. Comments on the proposed regulations are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposed regulations should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before September 16, 2002.

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 114: EXEMPTION - GROSS RECEIPTS AND COMPENSATING TAX - FUEL

3.2.114.8 REFUND OF TAX:
 When a refund of tax imposed by [Section] Sections 7-13-3 and 7-16A-2.1 NMSA 1978 is given the purchaser under [Section] Sections 7-13-17 or 7-16A-13.1 NMSA 1978, the compensating tax will be deducted from such refund and no gross receipts tax will be charged at the time of sale of the product. The reasonable value of gasoline or special fuel for compensating tax purposes will be the price paid for the fuel, including any applicable excise taxes whether separately stated or included in the price. This version of Section 3.2.114.8 NMCA applies to transactions on or after July 1, 1998.

TITLE 3: TAXATION
CHAPTER 6: PROPERTY TAXES
PART 5: CLASSIFICATION OF PROPERTY

3.6.5.23 RESPONSIBILITY OF COUNTY ASSESSORS TO DETERMINE AND MAINTAIN CURRENT AND CORRECT VALUES OF PROPERTY

A. COST SHARING PROVISIONS IN VALUATION MAINTENANCE CONTRACTS: The depart-

ment will not enter a contract pursuant to Subsection C of Section 7-36-16 NMSA 1978 which provides for sharing of the costs of valuation maintenance programs with counties unless the department has a report from the secretary of finance and administration showing the amount of county funds available or which could be made available for a valuation maintenance program. In the event the report indicates that the county has available sufficient funds for a valuation maintenance program, the contract will provide for only a minimal amount as the department's share of the program costs.

B. SALES RATIO REPORT: The written report which assessors are required to provide under Subsection E of Section 7-36-16 NMSA 1978 includes "... the relationship of sales prices of property sold to values for property taxation purposes ...". This portion of the report is referred to as the "sales ratio report." The sales ratio report is prepared in accordance with the instructions of the division. In its instruction or by its order to particular county assessors, the division may permit the sales ratio report to be prepared on the basis of sampling. The division instruction will provide for a "uniform sales data card" to be used by each county assessor in recording sales. These cards, or copies of these cards, will be provided the division by the county assessor upon direction by the division.

C. CURRENT AND CORRECT VALUES OF PROPERTY DEFINED: ~~The phrase "current and correct values of property" as used in Section 7-36-16 NMSA 1978 means:~~

~~(1) for the 1995 and 1996 property tax years, the 1993 valuation level; and~~

~~(2) for each two succeeding property tax years, the valuation level in the preceding odd-numbered year.~~ Assessors may appraise unsold residential property or non-residential property, or both, once per year (one-year appraisal cycle) or once every two years (two-year appraisal cycle).

Once an assessor elects to use a particular cycle, however, the cycle must continue to be employed until all properties of a particular type (i.e., residential or non-residential) have been assessed. Assessors may then change from the cycle that is currently in use to the other one. The phrase "current and correct values of property" as used in Section 7-36-16 NMSA 1978 means:

(1) For residential property sold during property tax year 2002 and subsequent tax years the phrase means its market value between the time of sale and January 1 of the next tax year. Such property is not subject to any limitation in value changes until the mailing of notice of value in the next tax year unless any provision of Section 7-36-21.2 NMSA 1978 specifically

prohibits a change;

(2) For residential property not sold in 2002 the phrase means its market value in tax year 2001 and, for each of the two following tax years, its market value during the preceding odd-numbered tax year. Unsold property must be reappraised using the selected reappraisal cycle. It is subject to any value-increase limitation in effect, and

(3) For non-residential, locally assessed property in 2002 "current and correct values of property" is the property's market value in 1999 and, for each of the two following tax years, its market value during the preceding odd-numbered tax year.

TITLE 3: TAXATION
CHAPTER 16: MOTOR VEHICLE FUEL TAXES
PART 4: GASOLINE TAX - DEDUCTIONS

3.16.4.9 DEDUCTION - SALES TO OTHER DISTRIBUTORS:

A. Gasoline received by a distributor and sold to another distributor may not be deducted from the amount of gasoline received in New Mexico, even though the other distributor is bonded and registered, because the purchasing distributor did not "receive" gasoline within the meaning of the act.

B. The tax consequences of sales to other distributors and sales by them to the United States are illustrated by the following examples. These examples concern only the liability of the parties to the department and do not affect the obligation of any party to pay the price for the gasoline to the seller. The fact that the price may include an amount corresponding to the tax does not make that amount a tax on the purchaser.

C. Examples:

(1) A, a registered gasoline distributor in New Mexico, received one thousand (1,000) gallons of gasoline in June. B, also a registered distributor who is located in the same city as A, needed one thousand (1,000) gallons of gasoline of the type A had received and arranged to purchase the one thousand (1,000) gallons from A. A may not deduct the one thousand (1,000) gallons from the amount of gasoline A received in that June. B is not liable for tax on this gasoline because B did not receive it.

(2) In addition to the facts in example 1, B delivered the one thousand (1,000) gallons of gasoline purchased from A to the United States. A must report the one thousand (1,000) gallons of gasoline and pay the tax upon it. A may deduct one thou-

sand (1,000) gallons from the amount of gasoline received because of Subsection B of Section 7-13-4 NMSA 1978.

~~[(3) In addition to the facts in example 2, B had not received any gasoline in the month in which the transaction took place. B may carry over to the next month the deduction for the one thousand (1,000) gallons of gasoline sold to the United States. B may not obtain a refund from the department of any amount of the tax which was included by A in its sale to B.]~~

3.16.4.12 **[INDIRECT] SALES TO REGISTERED INDIAN TRIBAL DISTRIBUTORS:** ~~[Gasoline received and subsequently sold to a registered Indian tribal distributor may be deducted under Subsection E of Section 7-13-4 NMSA 1978 from the total amount of gasoline received in New Mexico.] A registered distributor who receives gasoline as defined in Section 7-13-2.1 NMSA 1978 may take the deduction under Subsection E of Section 7-13-4 NMSA 1978 only by selling this gasoline directly to a registered Indian tribal distributor if, for the reporting period in which the sale was made, the distributor's Indian nation, tribe or pueblo has in effect a tax on gasoline substantially equivalent to the gasoline tax. In that case the number of gallons of gasoline that may be deducted equals the product of the number of gallons sold times a fraction, the numerator of which is rate of the tribal tax, expressed in cents per gallon, and the denominator is the rate of the gasoline tax, in the same units. Proof that the tribal tax has been paid with respect to the gasoline must accompany the claim for deduction.~~

3.16.4.13 **[INDIRECT] SALES TO PERSONS ELIGIBLE FOR THE DEDUCTION PROVIDED UNDER SUBSECTION F OF SECTION 7-13-4 NMSA 1978:**

A. The deduction provided by Subsection F of Section 7-13-4 NMSA 1978 is available only to those distributors certified by the secretary as meeting the qualifications of Subsection F of Section 7-13-4 NMSA 1978. Such distributors, for the purposes of Section 3.16.4.13 NMAC, may be referred to as "certified distributors".

B. ~~[Gasoline received and subsequently sold to a certified distributor may be deducted under Subsection F of Section 7-13-4 NMSA 1978 from the total amount of gasoline received in New Mexico.] A registered distributor who receives gasoline as defined in Section 7-13-2.1 NMSA 1978 may take the deduction under Subsection F of Section 7-13-4 only by selling this gasoline directly to a certified~~

~~distributor~~ provided that the total amount deducted under this provision by all receivers of gasoline may not exceed 30,000,000 gallons per certified distributor in any calendar year. The certified distributors are responsible for informing each of their suppliers whenever the number of gallons purchased by the certified distributor exceeds 30,000,000 per calendar year; gasoline tax is due on all such excess gallons. The certified distributor shall be liable for paying gasoline tax with respect to any gallons received in excess of the 30,000,000 limit.

C. The deduction provided at Subsection F of Section 7-13-4 NMAC 1978 applies in the instance in which gasoline is received pursuant to Subsection D of Section 7-13-2.1 NMSA 1978. Once gasoline is properly deducted by a certified distributor pursuant to Subsection F of Section 7-13-4 NMSA 1978, that gasoline is not again subject to the gasoline tax as long as the gasoline does not leave New Mexico prior to retail sale.

TITLE 3: TAXATION
CHAPTER 16: MOTOR VEHICLE FUEL TAXES
PART 7: GASOLINE TAX - REGISTRATION AS DISTRIBUTOR, WHOLESALE OR RETAILER

3.16.7.11 DEPARTMENT MAY REMOVE NONCOMPLYING DISTRIBUTORS FROM LIST:

A. In accordance with Section 3.16.7.11 NMAC, the department may cancel the registration of a distributor as a distributor of gasoline and remove its name from the list of distributors registered under the Gasoline Tax Act if the distributor does not substantially comply with the requirements to file gasoline tax returns in the form and manner prescribed by the secretary or to file petroleum products loading fee reports in the form and manner prescribed by the secretary with respect to gasoline loaded or imported by the distributor.

B. The department shall notify the distributor of its intent to cancel the distributor's registration as a distributor of gasoline and to remove its name from the list. The notice shall provide for a hearing at least ten days after the date of the date notice is provided. At the hearing the distributor will be given an opportunity to demonstrate substantial compliance. If, in the judgment of the hearing officer, substantial compliance is not demonstrated, the hearing officer shall order the immediate cancellation of registration as a distributor and removal from the list of ~~distributor or~~

~~to file petroleum products loading fee reports in the form and manner prescribed by the secretary with respect to gasoline loaded or imported by the distributor] distributors.~~

TITLE 3: TAXATION
CHAPTER 16: MOTOR VEHICLE FUEL TAXES
PART 109 SPECIAL FUELS TAX - CALCULATION OF EXCISE TAX

3.16.109.13 SPECIAL FUEL USED IN SCHOOL BUSES: Receipts from the sale of special fuel dyed in accordance with federal regulations for use in school buses is subject to gross receipts tax and not the special fuel excise tax.

End of Notices and Proposed Rules Section

Adopted Rules and Regulations

NEW MEXICO ATHLETIC TRAINERS PRACTICE BOARD

This is an amendment to 16.3.8 NMAC, Section 8.

16.3.8.8 FEES

A. ~~[One Hundred dollars (\$100.00)]~~ One hundred twenty five dollars (\$125.00) is the application fee which allows the applicant to sit for Jurisprudence and/or Board Examinations.

B. One Hundred dollars (\$100.00) is the fee for a provisional athletic trainer permit.

C. One Hundred dollars (\$100.00) is the initial licensing fee for athletic trainer licenses which shall be issued for a period of one licensing year or portion thereof. This amount will be prorated on a quarterly basis. The pro-rated fees will be as follows:

(1) July - November \$100.00

(2) December - February \$75.00

(3) March - June \$50.00

D. Licenses issued after June 30th will expire on August 31st of the following year.

E. ~~[One Hundred and fifty dollars (\$150.00)]~~ One hundred and sixty five dollars (\$165.00) is the annual renewal fee.

F. Seventy-five dollars (\$75.00) is the late fee for annual renewals beyond the August 31 renewal deadline as defined in 16.3.7 NMAC.

G. Ten dollars (\$10.00) is the fee for replacement of an athletic trainer license or wallet card.

H. Twenty dollars (\$20.00) is the fee for address labels of New Mexico licensed athletic trainers. These labels can be obtained by contacting the Board.

I. Ten dollars (\$10.00) is the fee for address lists of New Mexico licensed athletic trainers.

J. Ten dollars (\$10.00) is the fee for written verification of licensure from the Board.

K. CEU Approval Fee is Fifty dollars (\$50.00).
[1-16-00; 16.3.8.8 NMAC - Rn, 16 NMAC 3.8.8, 8-16-01; A, 08-09-02]

NEW MEXICO BOARD OF EDUCATION

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 63 SCHOOL PERSON- NEL - LICENSURE REQUIREMENTS FOR ANCILLARY AND SUPPORT

PERSONNEL PART 12 SCHOOL BUSINESS OFFICIAL LICENSURE

6.63.12.1 ISSUING AGENCY:
State Board of Education
[6.63.12.1 NMAC - N, 01-01-03]

6.63.12.2 SCOPE: All individuals seeking initial or continuing school business licensure in public schools, including charter schools.
[6.63.12.2 NMAC - N, 01-01-03]

6.63.12.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, 22-2-5, 22-10-3, NMSA 1978
[6.63.12.3 NMAC - N, 01-01-03]

6.63.12.4 DURATION:
Permanent
[6.63.12.4 NMAC - N, 01-01-03]

6.63.12.5 EFFECTIVE DATE:
January 1, 2003, unless a later date is cited in the history note at the end of a section.
[6.63.12.5 NMAC - N, 01-01-03]

6.63.12.6 OBJECTIVE: This regulation establishes guidelines, procedures and competencies for those individuals serving or seeking to serve as the School Business Official of a local school district, including charter schools. It also establishes guidelines, procedures and competencies for those individuals serving or seeking to serve at the district level in a local school district, charter school district, or in a charter school not within a charter school district, in the capacity of a supervisor or director or manager of accounting and/or bookkeeping.
[6.63.12.6 NMAC - N, 01-01-03]

6.63.12.7 DEFINITIONS:
[RESERVED]

6.63.12.8 REQUIREMENTS FOR RECEIVING THIS LICENSE:

A. Any person serving or seeking to serve as the school business official of a local school district, including charter schools, and any person serving or seeking to serve in a local school district, including charter schools, in the capacity of a supervisor or director or manager of accounting and/or bookkeeping shall be required to hold this license. A person seeking this license shall have earned or completed one or more of the following:

(1) A current Certified Public Accountant certificate; or

(2) A bachelor's, master's, or doctorate degree with at least twenty four

semester hours in accounting, business or a related field from a regionally accredited or state board of education ("SBE") approved college or university; or

(3) An associate's degree in accounting or a related field from a regionally accredited or state board of education ("SBE") approved college or university plus at least three (3) years of verifiable, employment experience related to accounting or bookkeeping; or

(4) A high school diploma or G.E.D. plus at least five (5) years of verifiable, employment experience related to accounting or bookkeeping.

B. In addition to satisfying the requirements contained in Subsection A of Section 8 of 6.63.12 NMAC, a person receiving an initial school business license shall be issued a one-year conditional license that shall convert automatically to a three-year Level I license provided that during this first year the person satisfactorily completes a training program approved by the state board.
[6.63.12.8 NMAC - N, 01-01-03]

6.63.12.9 COMPETENCIES:
To qualify for receipt of a Level II license, a person shall comply with the competency requirements enumerated as follows:

A. Legal Issues: The school business official understands and demonstrates the ability to:

(1) Identify the state and federal constitutional rights that apply to individuals within the public education system.

(2) Review and analyze appropriate statutory and constitutional authority regarding the administration of public schools.

(3) Review and analyze significant statutory issues relative to financial resource management.

B. Financial Resource Management: School business officials must be able to demonstrate, understand, and comprehend the principles associated with school finance, budgeting, financial planning, accounting, auditing, financial reporting, cash management, investments, debt management and technology for school business operations.

(1) Principles of School Finance: The school business official understands and demonstrates the ability to apply all New Mexico State Statutes and Regulations as they apply to public schools including but not limited to:

(a) Procurement Code, Sections 13-1-28 to 13-1-199 NMSA 1978, as may be amended or reenacted;

(b) New Mexico State Department of Public Education Manual of

Procedures (Attachment "A") in its most current form;

(c) Department of Finance and Administration Rules as set forth in Title 2 of the NMAC, as may be amended, replaced, or otherwise changed; and

(d) New Mexico State Auditor Rules as set forth in Title 2 of the NMAC, as may be amended, replaced, or otherwise changed;

(2) Budgeting and Financial Planning: The school business official understands and demonstrates the ability to:

(a) apply the legal requirements for budget adoption;

(b) prepare a local budget calendar to meet the time constraints of budget preparation;

(c) recognize and analyze significant social, demographic and economic changes which may impact the financial plan of the district;

(d) recognize and forecast the major sources of revenue available to public schools from local, state and federal levels of government;

(e) analyze the impact of shifts in local, state and federal funding and its effect on local spending plans;

(f) recognize and explain internal and external influences on the budget;

(g) recognize multiple approaches to determine reliable enrollment and personnel projections;

(h) interpret the state funding model;

(i) prepare revenue projections and estimates of expenditures for school sites and district-wide budgets;

(j) identify various methods of budget analysis and management;

(k) exercise budgetary management; and

(l) apply analytical procedures for budgetary analysis;

(3) Accounting, Auditing, and Financial Reporting: The school business official understands and demonstrates the ability to:

(a) understand the use and role of internal and external audits;

(b) prepare and analyze interim and annual financial statements;

(c) report the financial status and operating results to the local board of education;

(d) determine revenues and expenditures by fund using state-approved charts of accounts;

(e) develop and maintain all fixed assets inventory in accordance with applicable Governmental Accounting Standards Board pronouncements;

(f) use the annual audit report to improve financial tracking and reporting; and

(g) apply the appropriate basis of accounting in accordance with applicable Governmental Accounting Standards Board pronouncements in measuring financial position and operating results.

(4) Cash Management, Investments, and Debt Management: If applicable to the school district in which he or she is employed, the school business official understands and demonstrates the ability to:

(a) use lease purchasing and joint powers agreements;

(b) select banking and other financial services;

(c) recognize the statutory limitations on investment options available to a school district;

(d) apply procedures for implementing and monitoring internal transfers and loans; and

(e) apply the process of issuing long-term general obligation bonds including the bond rating process and the role of the bonding attorney and rating services.

[6.63.12.9 NMAC - N, 01-01-03]

6.63.12.10 ETHICS: Holders of a School Business Official's license shall discharge their duties in a manner that maximizes the public's confidence and trust in the integrity of public school fiscal practices. Accordingly, they shall be held to the highest standards of accounting practices with a goal of maintaining the public trust and ethical management of their School District's financial assets. Holders of this license shall be deemed to be bound by significant portions of 6.60.9 NMAC ("Licensure Requirements, Code of Ethical Responsibility of the Education Profession"), which is hereby incorporated by reference.

A. Holders of the School Business Official License shall be held to the enumerated Standards of Professional Conduct of Section 9, Subsections B and C of 6.60.9 NMAC, which imposes minimal standards of accepted ethical behavior.

B. Section 10 of 6.60.9 NMAC shall also apply to holders of the school business official license.

C. Any violation of statutory or regulatory requirements may constitute grounds for suspension, revocation or non-renewal of a school business official license.

D. Material deviations of accepted accounting standards that result in substantial financial loss to a local school district shall constitute grounds for suspension, revocation or non-renewal of a school business official license.

E. Use of public school funds for other than approved official school purposes shall constitute grounds for

suspension, revocation or non-renewal of a school business official license.

F. Holders of the school business official license shall report material misuse of public school funds to their superintendent, and/or whichever person or entity seems most appropriate under the circumstances. Non-reporting of material misuse of public school funds that results in substantial financial loss to a local school district may constitute grounds for suspension, revocation or non-renewal of a school business official license.

[6.63.12.10 NMAC - N, 01-01-03]

6.63.12.11 CONTINUING LICENSURE: An initial school business license is considered to be a Level I license and renewed licenses shall be Level II Licenses except as provided in 6.60.6 NMAC, Continuing Licensure for Licensed Educators in New Mexico.

A. The one-year conditional license shall be considered as part of the three-year Level I license. The initial school business official license is valid for three (3) years and becomes effective on July first of a year and expires the 30th of June three years thereafter.

B. As a condition for receipt of a Level II license, a person applying for such licensure shall satisfactorily demonstrate the competencies contained in this rule.

C. All renewed Level II school business official licenses are valid for nine (9) years and become effective on July first of a year and expire the 30th of June nine years thereafter.

[6.63.12.11 NMAC - N, 01-01-03]

6.63.12.12 SAVINGS CLAUSE:

A. Upon the effective date of this rule, individuals who have been employed in any local district(s) for at least (3) three school years as a school business official, may receive a Level II license provided they obtain verification from a superintendent of a school district in which the individual has been employed, that they have satisfied the competencies contained in this rule.

B. Anyone employed as a school business official in a local district who, at the effective date of this rule, does not qualify for a Level II license under this section, shall be required to obtain a school business license pursuant to the other provisions of this rule.

[6.63.12.12 NMAC - N, 01-01-03]

HISTORY OF 6.63.12 NMAC:
[Reserved]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an Amendment to 19.30.2 NMAC sections 8, 9 & 13.

19.30.2.8 TECHNIQUES / INTERVENTION:

A. Reporting: A
landowner, lessee, or employee, upon recognizing depredation, shall contact by phone, in person, or in writing, the Department of Game and Fish officer or office in the area where the damage is occurring. The office or officer shall record the complaint on a form approved by the State Game Commission within 3 days and forward a copy of the complaint to the landowner, lessee, or employee and the Department office in Santa Fe. Upon receipt of the complaint and no later than 3 days, the Department will issue the landowner, lessee, or employee a depredation complaint number. If any Game animal is taken pursuant to this regulation, the landowner, lessee or employee shall allow a Department of Game and Fish representative on the property for inspection and removal of the carcass. Upon such inspection, the Department representative will photograph the carcass, report the method of killing, photograph the damage to the property and write a report on the incident, including adjacent range conditions.

(1) Within three (3) days of reporting the depredation, the landowner, lessee, or employee must furnish the Department of Game and Fish with verifiable documentation of any income earned from the depredating species on that property. Such documentation may be hunting contracts, private land hunter lists, trespass fees etc.

(2) The tolling of time limits, as described in 17-2-7.2 NMSA 1978, will begin upon issuance of the depredation complaint number.

(3) A Department representative or employee will go to the private or leasehold interest property of the complainant within 24 hours of receipt of the complaint and will, with the landowner, lessee, or employee, determine the kind and number of animals involved and the extent of the damage. If the landowner, lessee, or employee is not available for inspection within 24 hours, the tolling of time will not begin until the inspection has occurred.

(4) Within 10 days of the receipt of the complaint, the Department will offer a minimum of three (3) methods of intervention that will resolve the depredation problem. **However, at least one interven-**

tion method shall be a permanent solution. The intervention methods shall be in writing on a form approved by the State Game Commission.

(5) Upon written agreement as to the intervention, the Department will implement the intervention methods. Methods will begin within five (5) days of the signed agreement.

B. Exceptions:

(1) In the case of a threat or immediate threat to human life, or an immediate threat of damage to property by a game animal where the property damage is greater in value than the value of any wildlife related income or fee collected by the landowner or lessee, a landowner, lessee, or employee may take action to immediately kill or take the game animal or quadruped and report such killing to the Department within 24 hours and before removal of the carcass. In the event the Department cannot be contacted within 24 hours of the destruction of an animal, the landowner, lessee or employee shall care for the carcass so as to salvage any edible portions and preserve them for disposal by the Department in accordance with the law, which may include sale to the highest bidder. If a game animal is killed pursuant to this Paragraph, the Department shall publish annually a legal notice of the incident in a newspaper of general circulation and locally within the state. The notice shall describe each incident, the county of the occurrence, and the number of big game or waterfowl taken.

(2) In the case of immediate threat of damage to property or crops, a landowner may take any non-lethal action to discourage the protected animal or quadruped and continue such action until the Department intervention method begins. If the Department does not resolve the threat within one year, the landowner, lessee, or employee may take action as prescribed in 17-2-7.2 NMSA 1978 by taking or killing the offending animals. In the event that non-lethal methods are impractical or ineffective, a landowner, lessee or employee may take lethal action. Nothing in this provision shall be interpreted to limit any protections afforded by the constitution.

(3) Nothing shall prevent the Department from taking action to discourage the offending animals during the pendency of the written intervention agreement.

(4) Nothing shall prevent a landowner, lessee, or employee from continuing to work with the Department after one year, thereby preventing the destruction of the animals, if agreed by the parties.

(5) Nothing in this regulation shall authorize taking or harassing any ani-

mals contrary to the federal Endangered Species Act or Migratory Bird Treaty Act or contrary to any other federal or state law.

(6) Conflicts of interest: To avoid conflict of interest or the harvesting of wildlife for personal gain, the landowner, lessee, employee and all family members should not be allowed to take possession or bid on the animals killed.

C. Interventions:

Intervention methods may include but are not limited to those listed. Intervention methods shall be used to achieve long-term solutions to depredation on private lands and shall be incorporated into the written agreements, as explained in paragraphs 4 and 5 of subsection A of 19.30.2.8 NMAC. A landowner may reject any of the public processes listed herein prior to a written intervention plan and need not show good cause for such rejection. Upon verbal or written notice of rejection of public involvement as a possible resolution, the Department will not offer such a process in the written intervention plan.

(1) Scare or Deterrent Tactics - Zon gun, cracker shells, fuse rope, chemical repellents, noise devices, to include audio and visual devices, etc.

(2) Fencing modifications - to include technical advice, loan of panels or fence materials, work with Highway Department, etc.

(3) Technical assistance is to include habitat manipulation, grazing or crop rotation, winter feeding, if applicable, use of public process for resolution.

(4) Management modification - landowner hunt system, if one exists, depredation hunts, regular hunt season modification.

(5) Utilize local and statewide citizen intervention to develop resolution strategies, which could include volunteer assistance.

(6) Trapping and transplanting.

(7) Utilize private companies through contract to resolve damage recurrence.

(8) Other options as agreed upon by the parties and as developed through the resolution process. These options include but are not limited to those ideas developed through public input, State Game Commission meetings, sportsman and livestock groups, etc.

D. Causing a Nuisance

Game Animal Problem: It shall be unlawful for any person, by intention or through negligence, to cause a nuisance game animal problem by baiting, feeding, or otherwise enticing game animals to an area, and such persons, if convicted, may be punished under 17-2-10 NMSA 1978.

[9-1-89, 9-15-97; 19.30.2.8 NMAC - Rn, 19

NMAC 30.2.8, 7-16-01; A, 07-31-02]

19.30.2.9 PROCEDURE:

A. Number of Methods:

The Department will offer a minimum of three (3) intervention methods, including one for immediate relief and one for a ~~long-term~~ **permanent** solution. The goal of these methods is to provide a permanent resolution to animal damage problems.

B. Rejection of

Intervention Method: The landowner may reject for good cause any intervention method that does not accomplish the goal as stated in Subsection A of 19.30.2.9 NMAC. The rejection must be in writing and submitted to the appropriate area office of the Department within 2 days of the landowner's receipt of the intervention proposal. The written rejection must explain the good cause, as defined in Subsection N of 19.30.2.7 NMAC.

[9-15-97; 19.30.2.9 NMAC - Rn, 19 NMAC 30.2.9, 7-16-01; A, 07-31-02]

19.30.2.13 BIG GAME DEPREDATION DAMAGE FUND:

A. Expenditures:

Allowable expenditures from the Big Game Depredation Damage Fund shall be in accordance with Subsection C of 19.30.2.8 NMAC, including leasing of forage and water, and building of barriers. Direct compensation shall not be allowed.

(1) Expenditures shall be made available to correct or prevent damage to federal, state or private lands caused by big game.

(2) Supplies and material may be placed, installed, erected or utilized on federal, state or private lands only after a written agreement between the complainant and the Department has been signed.

(3) No intervention method shall be approved if funding is not available.

(4) If funding is limited, big game depredation damage agreements/projects will be funded and given a priority by magnitude of the problem, historic depredation reporting and amount of available funding.

(5) A permanent intervention method or solution shall be given funding and consideration priority.

(6) Forage leases and agreements shall be limited to a maximum of two (2) consecutive years and shall not exceed \$5,000.00. A forage lease or agreement shall only be allowed one time, only in conjunction with an agreement of the landowner to accept a permanent depredation intervention solution (i.e. game-proof fence, etc.), and based on the legal amount of value. The value of all forage leases shall be determined or estimated using scientific methodology, range con-

sumption or utilization modeling and measuring.

B. Written agreements:

Shall be signed by both the Department and an authorized representative of the landowner. Each agreement shall specify the exact location of the intervention method to be utilized, the standard at which it will be implemented (i.e. fence-height, width, length, gate design, etc.), cost per intervention, life expectancy of intervention, maintenance and repair responsibilities. Prior to implementation of any intervention method, an owner or their representative must provide verifiable proof as to the land status and ownership of the property. If any conflict in documentation, map, deed or survey is found to exist, the owner shall either sign an affidavit attesting to ownership and liability of all installation of materials and supplies, or have a survey completed depicting land ownership status and submit the results to the Department prior to implementation of any intervention method. [19.30.2.13 NMAC - N, 12-14-01; A, 07-31-02]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.5.16 NMAC and 15.1.5.19 NMAC.

15.1.5.16 APPLICATION FOR FINDING OF SUITABILITY; CERTIFICATION:

A. The public interest requires that all key executives of an applicant or licensee obtain findings of suitability.

B. Pursuant to the Act, this rule constitutes a request and requirement by the Board that each key executive employed by a licensee submit an application of finding of suitability within 30 days of the first day of employment as a key executive.

C. The following persons are, or may be, subject to that requirement:

(1) any person who furnishes services or property to a gaming operator licensee under an agreement pursuant to which the person receives compensation based on earnings, profits or receipts from gaming;

(2) any person who does business on the gaming establishment;

(3) any person who provides goods or services to a gaming operator licensee for compensation that the board finds grossly disproportionate to the value of the goods or services;

(4) an officer, director, equity

security holder of 5% or more, partner, general partner, limited partner, trustee or beneficiary of a company licensee or company applicant;

(5) the key executives of a company licensee or company applicant;

(6) if the applicant or licensee is or will be a subsidiary, the holder of 5% or more of the equity security of a holding company or intermediary company that is not a publicly traded corporation;

(7) an officer, director, or key executive of a holding company, intermediary company or publicly traded corporation that is or is to become actively and directly engaged in the administration or supervision of, or any other significant involvement with, the activities of a subsidiary licensee or applicant;

(8) each person who, individually or with others, acquires, directly or indirectly, beneficial ownership of 5% or more of any voting securities in a publicly traded corporation registered with the board if the board determines that the acquisition would otherwise be inconsistent with the policy of the State;

(9) each person who, individually or with others, acquires, directly or indirectly, beneficial ownership of 10% or more of any class of voting securities in a publicly traded corporation certified by the board;

(10) the following members of a nonprofit organization gaming operator applicant or licensee: (a) the president or commander if the president or commander will have the power to exercise significant influence over decisions concerning any part of the licensed operations of the licensee or will be directly involved in the gaming activities of the licensee; (b) officers with check-writing authority or other financial responsibility; (c) board members; (d) key executives, such as the gaming manager and the officers, employees, volunteers and other persons designated by the nonprofit organization as key executives; and (e) any person who has access to the internal structure or software of any gaming machine or associated equipment; and

(11) any other person as deemed necessary by the board to protect the public health, safety, morals and general welfare.

D. A finding of suitability relates only to the involvement specified in the application. A key executive will be required to seek a new determination from the board within 30 days if there is any change in the nature of the involvement from that for which the key executive was previously found suitable by the board.

E. The board may waive the requirement for finding of suitability of an institutional investor unless the board determines that public policy requires that

the institutional investor apply for such a finding.

F. A beneficial owner of an equity interest required to apply for a finding of suitability pursuant to paragraph 8 of Subsection [A]C of 15.1.5.16 NMAC or paragraph 9 of Subsection [A]C of 15.1.5.16 NMAC above may be deemed suitable by the board if the person has been found suitable by a gaming regulatory authority in another jurisdiction and provided the board finds that the other jurisdiction has conducted a thorough investigation that is comparable to investigations conducted by the board to determine suitability.

G. In making a determination of suitability for any other person that applies for a finding of suitability pursuant to this section, the board may consider, to the extent deemed appropriate by the board, the contents of a finding of suitability issued for that person by a gaming regulatory authority in another jurisdiction or by another state or federal licensing authority.

H. The board may deny, revoke, suspend, limit, or restrict any finding of suitability or application for such finding on the same grounds as it may take such action with respect to other licenses and licensees. The board also may take such action on the grounds that the person found suitable is associated with, controls, or is controlled by, an unsuitable person.

I. Upon final determination by the board of the applicant's suitability, the board will issue a certification of such finding to the applicant.

J. A person seeking a finding of suitability as a key executive of a nonprofit gaming operator applicant or licensee is not required to be a member of the nonprofit organization. The key executive may provide services to the nonprofit gaming operator licensee on a paid or volunteer basis.

K. An applicant for a gaming license or a licensee is responsible for ensuring that key person applications are filed in accordance with the Act and this rule. The Board may delay approval of or deny an application for a gaming license on the grounds that a key executive application has not been submitted.

L. No person may be employed as a key executive who has failed to file an application for finding of suitability as required by this rule. A licensee will be subject to disciplinary action, including suspension or revocation of the license, imposition of a fine, or both, if the licensee fails to ensure that the key executive has made the required application or employs as a key executive anyone who is required to file an application for finding of suitability but has failed to do so.

15.1.5.19 APPLICATION FOR MANUFACTURER'S OR DISTRIBUTOR'S LICENSE:

A. A person may act as a manufacturer or distributor only if that person has received from the board a license specifically authorizing that person to act as a manufacturer or distributor or is a manufacturer of associated equipment that has been issued a waiver pursuant to Section 60-2E-13(D) of the Act.

B. Applications for manufacturer's or distributor's licenses must be made, processed, and determined in the same manner as applications for other gaming licenses as set forth in the Act and this rule.

C. An applicant for a manufacturer's license or distributor's license may be required to post, as a condition of issuance of the license, a bond or irrevocable letter of credit in a manner and in an amount established by the board. Any such instrument must be issued by a surety company authorized to transact business in New Mexico and must be satisfactory to the board.

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.6.9 NMAC.

15.1.6.9 AREA OF LICENSED PREMISES; RESTRICTIONS:

A. The area approved as the licensed premises must be clearly marked. No gaming shall be permitted outside of the licensed premises. All gaming devices must be located within the licensed premises and such other locations for the storage, display, repair and maintenance of the gaming devices as may be approved in advance by the board.

B. No license will be issued for any premises under construction.

C. No building may contain, and no area may constitute, a licensed premises for more than one licensee.

D. ~~[No area that is a premises licensed under the New Mexico Liquor Control Act may be designated as a licensed premises under the Act unless the area in which gaming is to be conducted is physically separated by a permanent physical structure from the area in which alcoholic beverages are sold, served, delivered, or consumed. Alcoholic beverages may not be sold, served, delivered, or consumed on the licensed premises.]~~ The area approved as the licensed premises must be physically separated by a permanent barrier from all other general areas.

E. No area that is a premises licensed under the New Mexico Liquor Control Act may be designated as a race-track gaming operator's licensed premises under the Act. Alcoholic beverages shall not be sold, served, delivered, or consumed on the licensed premises.

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.10.32 NMAC.

15.1.10.32 USE OF GAMING RECEIPTS BY NONPROFIT OPERATOR LICENSEE:

A. A nonprofit operator licensee may utilize up to 65% of net take, after payment of the gaming tax and income taxes, to pay allowable expenses in reasonable amounts for conducting gaming activities on its licensed premises. If the nonprofit operator licensee has entered into a valid lease or other arrangement for furnishing gaming machines, the 65% maximum shall be distributed as follows:

(1) up to 40% of net take for payment to licensed distributors pursuant to a lease or other arrangement for furnishing a gaming machine; and

(2) for payment of other allowable gaming expenses, an amount equal to the difference between 65 % of net take less the amount paid to the distributor as described above.

B. The percentage set forth in this section constitutes the maximum amount that may be paid annually for allowable gaming expenses from net take. No other expenses related to or arising out of gaming activities may be paid from net take or gaming revenues, including but not limited to supplies, fees for management and other services, and repairs to and maintenance of licensed premises and gaming devices.

C. In no event may a nonprofit operator licensee pay to any distributor licensee the percentage payment allowed in this section until the gaming tax and other applicable taxes have been paid and provided all taxes and fees are current.

D. No nonprofit operator licensee or distributor licensee may enter into a contract, written or oral, in which the distributor's compensation or other payment is based on a percentage of net take for furnishing gaming machines under a lease or other arrangement until the contract has been reduced to writing and approved by the board.

E. The nonprofit operator licensee must distribute at least 60% of the

balance of net take to charitable or educational purposes, which purposes do not include gaming expenses. All funds required to be spent for charitable or educational purposes must be expended each year within 120 days after close of licensee's fiscal year end. The maximum 40% remaining after such distribution may be used for other expenses at the discretion of the nonprofit operator licensee, provided none of those expenses has been incurred to compensate a licensed distributor for the furnishing of gaming machines.

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.11.10 NMAC.

15.1.11.10 NOTICE OF CANDIDACY:

A. After the board has determined that an individual should be placed on the list, notice of the determination will be given to the person by personal service or by certified mail to the person's address last known to the board, or by service by publication if personal service or service by certified mail is unsuccessful.

B. Notice of candidacy will be in substantially the following form:

TO: (Name of candidate, including any aliases)

You are hereby notified that the New Mexico Gaming Control Board deems you to be a person to be excluded from licensed gaming establishments within the State of New Mexico, pursuant to Section 60-2E-34(A) of the Gaming Control Act, Sections 60-2E-1 through 60-2E-61 NMSA 1978. The grounds for exclusion are as follows: (designate subsections of the Act or board rules as grounds). You are further advised that you may request, within 30 days from the date of service of this notice, a hearing before the Gaming Control Board pursuant to Section 60-2E-59 of the Act to show cause why your name should be excluded from said list.

DATED this _____ day of _____.

Board Member

C. If a candidate does not request a hearing, the board will issue a final written decision as to the candidate's placement on the list. The person's exclu-

sion or ejection from gaming establishments becomes effective the date of issuance of the board's final order.

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.14.8 NMAC and 15.1.14.18 NMAC.

15.1.14.8 PUBLIC HEARINGS; LOCATION; HEARING EXAMINER:

A. All hearings held pursuant to Section 60-2E-32(B) of the Act will be conducted by a hearing examiner duly appointed by the board.

B. The location of the hearing will be in ~~[Santa Fe if the matter is an enforcement hearing or hearing on an action of statewide application and in the place or area affected if the matter is an enforcement hearing or hearing on an action of limited concern]~~ Albuquerque, unless either party makes written request to have the hearing conducted in the place or area affected.

C. All hearings held pursuant to the Act will be open to the public.

D. The hearing must be recorded on audiotape or other means of sound reproduction.

E. Any hearing provided for in this rule may be held telephonically, in the interest of a speedy resolution.

15.1.14.18 RECOMMENDED ACTION; FINAL DECISION:

A. At the request of the hearing examiner or upon motion by either party granted by the hearing examiner, and before the hearing examiner recommends action by the board, the parties may submit briefs including findings of fact and conclusions of law for consideration by the hearing examiner. The hearing examiner has the discretion to request briefs or grant a motion to submit briefs on any point of law deemed appropriate by the hearing examiner. Briefs submitted must include supporting reasons for any findings or legal conclusions and citations to the record and to relevant law. Should the hearing examiner request briefs or grant a party's motion to submit briefs, the hearing will be continued until the hearing examiner has given the briefs sufficient consideration and brings the hearing to a close. The hearing, however, must be completed no later than 45 days from the date of continuance.

B. The hearing examiner will prepare a written decision containing his or her recommendation of action to be

taken by the board. The hearing examiner's recommendation may include any, or any combination, of the following:

(1) revocation of the license or approval;

(2) suspension of the license or approval;

(3) limitation or conditioning of the license or approval; and

(4) imposition of a fine not to exceed \$25,000 for the first violation and \$50,000 for each subsequent violation.

C. Notice of the hearing examiner's recommended action must be served on the parties within 30 days of the conclusion of the hearing on the matter. Service must be made by registered or certified mail.

D. ~~[Any respondent who disagrees with the recommendation may request review of the recommendation by the board. A request for review must be made, in writing, within 10 days of service of the recommendation. Upon proper request, the board will review the recommendation. The board may remand the matter to the hearing examiner for presentation of additional evidence upon showing of good cause why such evidence could not have been presented at the previous hearing.]~~ The board will accept, reject or modify the hearing examiner's recommendation by majority vote. The final decision or order will be issued in writing and will include a statement of findings and conclusions and the reasons therefore, on all material issues of fact, law or discretion involved, together with the specific action taken, including limiting, conditioning, suspending, or revoking any license or imposing a fine, or any combination thereof. The board may not impose any sanction or order except within the board's jurisdiction or as authorized by law.

E. The final decision or order will be public and will become a part of the record.

~~F.]~~

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.15.8 NMAC and 15.1.15.17 NMAC.

15.1.15.8 PUBLIC HEARINGS; LOCATION; HEARING EXAMINER:

A. All hearings held pursuant to Section 60-2E-59 of the Act will be conducted by a hearing examiner duly appointed by the board.

B. ~~[Enforcement hearings [and hearings on actions of statewide application] will be conducted in [Santa Fe, and enforcement hearings and hearings on actions of limited local concern will be conducted] Albuquerque or, upon written request by an aggrieved person, in the place or area affected.~~

C. All hearings held pursuant to Section 60-2E-59 of the Act will be open to the public.

D. The hearing must be recorded on audiotape or other means of sound reproduction.

E. Any hearing provided for in this rule may be held telephonically, in the interest of a speedy resolution.

15.1.15.17 RECOMMENDED ACTION; FINAL DECISION:

A. At the request of the hearing examiner or upon motion by either party granted by the hearing examiner, and before the hearing examiner recommends action by the board, the parties may submit briefs including findings of fact and conclusions of law for consideration by the hearing examiner. The hearing examiner has the discretion to request briefs or grant a motion to submit briefs on any point of law deemed appropriate by the hearing examiner. Briefs submitted must include supporting reasons for any findings or legal conclusions and citations to the record and to relevant law. Should the hearing examiner request briefs or grant a party's motion to submit briefs, the hearing will be continued until the hearing examiner has given the briefs sufficient consideration and brings the hearing to a close. The hearing, however, must be completed no later than 45 days from the date of continuance.

B. Not more than ~~[40]~~30 days after completion of the hearing, the hearing examiner will prepare a written decision containing his or her recommendation of action to be taken by the board. The recommendation may propose to sustain, modify, or reverse the initial decision of the board or its agent.

C. Notice of the hearing examiner's recommended action must be served on the parties as promptly as possible but in no event later than 15 days after the date of the hearing on the matter. Service must be made by registered or certified mail.

D. The board will accept, reject or modify the hearing examiner's recommendation by majority vote. The final decision or order will be issued in writing and will include a statement of findings and conclusions and the reasons therefor, on all material issues of fact, law or discretion involved, together with the specific action

taken to sustain, modify, or reverse the initial decision of the board or its agent.

E. The final decision or order will be public and will become a part

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.17.9 NMAC.

15.1.17.9 SCHEDULE OF FINES AND PENALTIES:

A. Penalties to be imposed for violations of the Act or this title will be determined by the board depending upon the facts and circumstances of each case. The penalty for a first violation will include the imposition of administrative fines within the ranges shown below, unless circumstances warrant enhancement of the fine. The maximum fine for each subsequent violation is \$50,000. The penalty for any violation may also include suspension or revocation of the license or denial of license renewal.

B. Licensing violations include:

(1) Engaging in gaming activity without valid license—\$10,000 to \$25,000 fine (Code 201).

(2) Possession of illegal gaming device—~~[\$]1,000~~ to ~~[\$+]5,000~~ fine (Code 202).

(3) Failure to apply for certification of finding of suitability—\$500 to \$1,000 fine (Code 203).

(4) Employing persons without work permits or key person certifications—\$500 to \$1,000 fine (Code 204).

(5) Expired work permit—\$250 to \$500 fine (Code 205).

(6) Unlicensed gaming machine—\$1,000 to \$5,000 fine (Code 206).

(7) Selling, offering to sell, or distributing a gaming device to other than a gaming operator licensee—\$10,000 to \$25,000 fine (Code 207).

(8) Purchasing, leasing, or otherwise receiving a gaming machine from other than an authorized licensee—\$5,000 to \$10,000 fine (Code 208).

(9) Association with distributor or manufacturer with revoked license—\$1,000 to \$5,000 fine (Code 209).

(10) Unauthorized transfer of license—\$5,000 to \$10,000 (Code 210).

C. Operating violations include:

(1) Permitting play on an unauthorized gaming machine—\$5,000 to \$10,000 fine (Code 301).

(2) Permitting play of an unauthorized game—\$1,000 to \$5,000 fine (Code

302).

(3) Possessing or installing a gaming machine at other than an authorized location—\$2,500 to \$10,000 fine (Code 303).

(4) Engaging in dishonest or deceptive practices involving gaming activity—\$5,000 to \$10,000 fine (Code 304).

(5) Public nuisance—\$5,000 to \$10,000 fine (Code 305).

(6) Minor playing a gaming machine—\$5,000 to \$10,000 fine (Code 306).

(7) Unauthorized person on licensed premises—\$2,500 to \$7,500 fine (Code 307).

(8) Unauthorized person playing a gaming machine—\$5,000 to \$10,000 fine (Code 308).

(9) Sale, service, delivery or consumption of alcoholic beverage on licensed premises—\$5,000 to \$10,000 fine (Code 309).

(10) Operating or permitting the playing of gaming machine on unauthorized days or times—\$2,500 to \$5,000 fine (Code 310).

(11) Operating or permitting the operation of more than maximum number of gaming machines allowed—\$5,000 to \$10,000 fine (Code 311).

(12) Failure to pay winnings or award prizes—\$1,000 to \$5,000 fine (Code 312).

(13) Failure to maintain adequate security—\$1,000 to \$5,000 fine (Code 313).

(14) Unauthorized or improper use of tokens—\$500 to \$1,000 fine (Code 314).

(15) Unauthorized or improper disposition of tokens—\$500 to \$1,000 fine (Code 315).

(16) Unauthorized or improper disposal of gaming device—\$500 to \$1,000 fine (Code 316).

(17) Unauthorized modification of gaming device where the modification changes the manner of operation from that approved by the board or from that represented to patrons—\$1,000 to \$5,000 fine (Code 317).

(18) Knowingly associating with, employing, or assisting, directly or indirectly, persons or businesses of disreputable character—\$5,000 to \$10,000 fine (Code 318).

(19) Employing a person who has been denied, or failed or refused to apply for, a gaming license, work permit or finding of suitability in any jurisdiction—\$5,000 to \$10,000 fine (Code 319).

(20) Failing to comply with all federal, state and local laws and rules governing gaming activity, including payment

of fees and taxes due—\$5,000 to \$10,000 fine (Code 320).

(21) Conducting, operating, or dealing with any cheating game or device—\$5,000 to \$10,000 fine (Code 321).

(22) Unauthorized modification of licensed premises—\$1,000 to \$5,000 fine (Code 322).

(23) Facilitating, participating in, or allowing the issuance of any loans or extending credit to a gaming patron for gaming purposes—\$1,000 to \$5,000 fine (Code 323).

(24) Misleading or deceptive pay-off schedule—\$500 to \$1,000 fine (Code 324).

(25) Failure to make payments in accordance with payoff schedule—\$1,000 to \$5,000 fine (Code 325).

(26) Failure to install or maintain adequate surveillance system—\$1,000 to \$5,000 fine (Code 326).

(27) Insufficient funds in gaming tax transfer account—\$5,000 to \$10,000 fine (Code 327).

(28) Failure to comply with minimum accounting standards—\$1,000 to \$5,000 fine (Code 328).

(29) Commingling of gaming receipts with other monies of nonprofit organization gaming operator licensee—\$500 to \$7,500 fine (Code 329).

(30) Failure to maintain minimum bankroll required or to notify board of deficiencies—\$1,000 to \$10,000 fine (Code 330).

(31) Failure to request excluded person to leave or to prohibit entry on licensed premises or to properly notify board of excluded person on licensed premises—\$5,000 to \$10,000 fine (Code 331).

(32) Failure to implement or maintain adequate internal controls for gaming operations—\$1,000 to \$10,000 fine (Code 332).

(33) Unlawful or unauthorized operation of progressive system—\$5,000 to \$10,000 fine (Code 333).

(34) Unlawful or unauthorized promotion or additional payout—\$250 - \$5,000 fine (Code 334).

(35) Shipment of unapproved gaming device—\$1,000 - \$5,000 fine (Code 335).

(36) Unauthorized change in minimum internal controls—\$250 - \$2,500 fine (Code 336).

(37) Engaging in other unsuitable method of operation—\$1,000 to \$10,000 fine (Code 337).

D. Miscellaneous violations include:

(1) Interference with investigation, including denying the board or its agent or other authorized person access to,

or inspection of, a gaming establishment—\$10,000 to \$25,000 fine (Code 401).

(2) Providing false or misleading information to the board or the board's agent—\$1,000 to \$10,000 fine (Code 402).

(3) Failure to file required report or disclose information—\$500 to \$10,000 fine (Code 403).

(4) Failure to renew license while continuing to conduct licensed activity—\$500 to \$1,000 fine (Code 404).

(5) Unlawful gaming operations contract—\$1,000 to \$5,000 fine (Code 405).

(6) ATM on licensed premises—\$500 to \$1,000 fine (Code 406).

(7) Failure to implement or maintain compulsive gambling assistance plan—\$1,000 to \$5,000 fine (Code 407).

(8) Failure to disclose gaming contracts—\$1,000 to \$5,000 fine (Code 408).

(9) Failure to retain required records—\$500 to \$2,500 fine (Code 409).

(10) Felony conviction of licensee, employee or other agent of licensee—\$5,000 to \$25,000 fine (Code 410).

(11) Failure to be in possession of work permit—\$250 to \$500 fine (Code 411).

(12) Failure to post gaming license—\$250 to \$500 fine (Code 412).

(13) Failure to post required signs—\$250 to \$500 fine (Code 413).

(14) Failure to provide required notice—\$250 to \$1,000 fine (Code 414).

(15) Other violation—\$250 to \$10,000 fine (Code 999).

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to the Part name of 15.1.19 NMAC; 15.1.19.8 NMAC, 15.1.19.9 NMAC, and 15.1.19.10 NMAC.

TITLE 15 GAMBLING AND LIQUOR CONTROL

CHAPTER 1 GAMES AND GAMING GENERAL PROVISIONS

PART 19 PAYMENT OF WINNINGS OVER ~~\$(600)~~1,200.00 UNDER THE GAMING CONTROL ACT

15.1.19.8 PAYOUT RESTRICTIONS:

A. No gaming operator licensee may pay winnings in excess of ~~\$(600)~~1,200.00 to any winning patron without following the procedures set forth in this rule.

B. Failure to comply with the procedures set forth in this rule may

result in disciplinary action against the gaming operator licensee, including suspension or revocation of the gaming operator license, imposition of fines, or both.

15.1.19.9 VERIFICATION OF WINNINGS; REPORTING PROCEDURES:

A. When any winning patron seeks payment of winnings in excess of ~~\$(600)~~1,200.00, the gaming operator licensee must verify the winnings in accordance with approved minimum internal control standards.

B. Upon verification of the validity of the winnings, and before payment of the winnings, the gaming operator licensee must ensure that the winning patron completes a form provided or approved by the board to report the winnings.

C. The form must include the following information and must be completed in full:

(1) the name, address, telephone number, and social security number of the winning patron;

(2) the exact amount of the winnings;

(3) the date the winnings were won; and

(4) the name, address, telephone number, and gaming operator license number of the gaming operator.

D. In addition to providing the information required in Subsection C of 15.1.19.9 NMAC above, the winning patron must sign and date the following statements, under penalty of perjury:

(1) a statement declaring, to the best of the winning patron's knowledge and belief, that the winning patron does not owe and is not delinquent in child support payments in any state; and

(2) a statement attesting to the accuracy of the information provided.

E. After the winning patron completes the form, the gaming operator licensee must verify the identity of the winning patron and the information provided by checking the form against at least two forms of identification. Any of the following may be used for verification purposes, provided one of the forms contains a photograph:

(1) valid driver's license issued by any state;

(2) military identification card;

(3) current passport;

(4) social security card;

(5) identification card issued by the United States government; and

(6) major credit card.

F. Upon verification of the information provided by the winning

patron; the gaming operator licensee may pay the winnings.

G. If a winning patron refuses to provide any of the information required by this rule, or fails or refuses to complete the reporting form, the gaming operator licensee must withhold the winnings until such time as the information is provided.

15.1.19.10 DISTRIBUTION OF REPORTING FORM:

A. The gaming operator licensee must provide a copy of the reporting form to the winning patron and retain a copy for the gaming operator's records.

B. The gaming operator licensee must provide, on a weekly basis, copies of all such reporting forms to the Director of Child Support Enforcement or his designee.

C. Reports of winnings may not be made to the Department by telephone.

D. The gaming operator licensee is not required to report to the Department in any week in which the gaming operator licensee makes no payments of winnings in excess of \$~~600~~1,200.00.

E. The board will provide to the Department, on a monthly basis, a record of all winnings in excess of \$~~600~~1,200.00 resulting from single wagers at each licensed gaming establishment for the prior month.

NEW MEXICO STATE LAND OFFICE

New Mexico State Land Office

Notice of Repealed Rule

Ray Powell, New Mexico Commissioner of Public Lands, hereby gives notice to repeal State Land Office Rule 19 NMAC 2. SLO 16, Title 19 - Natural Resources & Wildlife, Chapter 2 - State Trust Lands, Part SLO 16 - Relating to Promulgation, Amendment and Repeal of Rules, effective July 31, 2002, and is hereby replaced with Title 19 - Natural Resources & Wildlife, Chapter 2 - State Trust Lands, Part 16 - Rulemaking Procedures (19.2.16 NMAC) effective July 31, 2002.

NEW MEXICO STATE LAND OFFICE

TITLE 19 NATURAL RESOURCES & WILDLIFE CHAPTER 2 STATE TRUST LANDS

PART 16 RULE MAKING PROCEDURES

19.2.16.1 ISSUING AGENCY: Commissioner of Public Lands - New Mexico State Land Office - 310 Old Santa Fe Trail - P. O. Box 1148 - Santa Fe, New Mexico 87501.

[19.2.16.1 NMAC - Rp 19 NMAC 2. SLO 16.1, 07/31/2002]

19.2.16.2 SCOPE: This rule governs the promulgation, amendment, and repeal of rules for the administration of the lands, resources, and assets held in trust by the Commissioner of Public Lands under the terms of the Enabling Act and subsequent legislation. If any provision of this rule is inconsistent with any specific statutory procedures that govern rulemakings conducted by the commissioner, the specific statutory procedures shall apply.

[19.2.16.2 NMAC - Rp 19 NMAC 2. SLO 16.2, 07/31/2002]

19.2.16.3 STATUTORY AUTHORITY: N.M. Const., art. XIII, section 2, and in Section 19-1-1 *et seq.* NMSA 1978.

[19.2.16.3 NMAC - Rp 19 NMAC 2. SLO 16.3, 07/31/2002]

19.2.16.4 DURATION: Permanent.

[19.2.16.4 NMAC - Rp 19 NMAC 2. SLO 16.4, 07/31/2002]

19.2.16.5 EFFECTIVE DATE: July 31, 2002.

[19.2.16.5 NMAC - Rp 19 NMAC 2. SLO 16.5, 07/31/2002]

19.2.16.6 OBJECTIVE: The objective of this rule is to provide for the orderly and lawful promulgation, amendment, and repeal of rules for the administration of state trust lands.

[19.2.16.6 NMAC - Rp 19 NMAC 2. SLO 16.6, 07/31/2002]

19.2.16.7 DEFINITIONS: As used in this rule.

A. "commissioner" means the commissioner of public lands. The commissioner is the executive officer of the state land office and may delegate to state land office staff the performance of duties required of the commissioner under this rule;

B. "rule" means any written rule, regulation or standard, and any written amendment or repeal of a rule, regulation or standard, issued or promulgated by the commissioner and binding persons other than the commissioner or the employ-

ees of the state land office, but does not include:

(1) Statements, policies, procedures, or directives concerning only internal management of the state land office and not binding lessees, applicants, or the public generally;

(2) Rulings or decisions of the commissioner in proceedings authorized by law regarding individual leases;

(3) Actions of the commissioner in regard to individual leases, contracts, grants, or other instruments executed by the commissioner; and

(4) Any applications, forms, schedules of fees or any guidance documents issued by the commissioner to implement the rules of the commissioner unless such documents are required by law to be included in a rule;

C. "rulemaking record" means all materials received or generated by the commissioner during a rulemaking proceeding, including but not limited to:

(1) the public notice and any documents related to the publication or posting of the public notice;

(2) the proposed rule or rule change;

(3) any written comments submitted during the comment period;

(4) any record (audio tape, video tape or stenographic) of the public hearing, if any, on the proposed rule;

(5) any reports or other documents prepared or submitted by state land office staff regarding the proposed rule; and

(6) the commissioner's order promulgating the rule;

D. "state land office" means the New Mexico state land office; and

E. "State Rules Act" means the State Rules Act codified at Chapter 14, Article 4 NMSA 1978, and any amendments thereof, and any rules adopted pursuant to that Act.

[19.2.16.7 NMAC - Rp 19 NMAC 2. SLO 16.7, 07/31/2002]

19.2.16.8 PUBLIC REQUESTS FOR RULEMAKING: Any interested person may request in writing that the commissioner promulgate, amend, or repeal a rule. Within one hundred twenty days of receipt of the written request, the commissioner shall either initiate formal proceedings to consider the proposed rule or issue to the individual making the request, a written statement of his reasons for denial of the request.

[19.2.16.8 NMAC - Rp 19 NMAC 2. SLO 16.14, 07/31/2002]

19.2.16.9 COMMENT PERI-

OD: No rule shall be adopted by the commissioner until after the commissioner provides public notice and a period for public comment of not less than thirty days, except as provided in this rule for emergency rules. [19.2.16.9 NMAC – Rp 19 NMAC 2. SLO 16.9, 07/31/2002]

19.2.16.10 NOTICE OF RULE-MAKING: Notice that the commissioner intends to promulgate, amend, or repeal a rule shall be given by publication in the New Mexico Register, by publication in at least one newspaper of general circulation in the state, and by posting on a website controlled or authorized by the commissioner. The notice shall state generally the subject of the proposed rulemaking, the manner in which interested persons may submit written comments and, if appropriate, the time and place of any public hearing. The notice may allow comments to be submitted by electronic mail. The notice shall also state where copies of the proposed rule may be obtained by interested persons. Individual notice of rulemaking to all state lessees, contract holders, or grantees shall not be necessary, unless as may be otherwise required by law.

[19.2.16.10 NMAC – Rp 19 NMAC 2. SLO 16.10, 07/31/2002]

19.2.16.11 RULE MAKING HEARINGS: In his discretion or as may be required by law, the commissioner may set a public hearing to allow comments on a proposed rule. Notice of such hearing shall be made as provided in 19.2.16.10 NMAC and shall be published and posted no less than thirty days prior to the date of the hearing. At such hearing the commissioner shall allow all interested persons, or groups of persons, reasonable opportunity to present written materials, present oral comments on the proposed rule, present questions, and to examine witnesses. State land office staff may appear at the hearing and present testimony and answer questions from the public. If the commissioner determines that oral presentation or the examination of witnesses is unnecessary or impractical, he may require that the presentation be submitted in writing and establish limitations on the examination of witnesses. At the hearing, all interested persons shall have the opportunity to review all documents or other pertinent information prepared in advance of the hearing. The commissioner may designate a hearing officer to conduct the public hearing. In his discretion, the commissioner may keep the rulemaking record open for a reasonable period of time after the hearing to receive further written materials.

[19.2.16.11 NMAC – Rp 19 NMAC 2. SLO 16.11, 07/31/2002]

19.2.16.12 CONSIDERATION OF THE RECORD; ORDER PROMULGATING RULE: After the close of the comment period, the commissioner shall consider the contents of the rulemaking record. If the commissioner adopts a rule, the commissioner shall, prior to the effective date of the rule, enter an order. The order shall include a concise statement of the commissioner's principal reasons for promulgating the rule and a statement of the major comments adopted or rejected in promulgating the rule and the reasons for their adoption or rejection. A copy of the commissioner's order shall be sent to all persons who submitted written comments and provided an address, and if a public hearing was held, all persons who were present at the hearing, as reflected on the attendance list. Individual notice of the order to state lessees, contract holders, or grantees shall not be necessary unless otherwise provided by law.

[19.2.16.12 NMAC – Rp 19 NMAC 2. SLO 16.15, 07/31/2002]

19.2.16.13 EFFECTIVE DATE OF RULES: Upon promulgation of a rule by the commissioner, the rule shall be posted in the state land office for the period required by law, if any, and filed as required by the State Rules Act. A rule shall be effective upon publication in the New Mexico Register, unless a later date is specified by the commissioner.

[19.2.16.13 NMAC – Rp 19 NMAC 2. SLO 16.12, 07/31/2002]

19.2.16.14 EMERGENCY RULES: If the commissioner determines that an emergency exists which requires immediate action, he may promulgate, amend, or repeal a rule and post the rule in the state land office for any minimum statutory period and thereafter file the rule as required by the State Rules Act. The rule shall be effective immediately upon filing. An emergency rule shall be designated as such in the text of the rule and shall include a statement of the necessity for the emergency need for the rule. No emergency rule shall continue in effect longer than thirty days unless within that time period the rule is published in the New Mexico Register and the commissioner commences proceedings to adopt the rule under the general provisions of this rule. If the commissioner commences such proceedings the emergency rule shall remain in effect until a permanent rule takes effect or until the proceedings are otherwise complete. In no event shall an emergency rule remain in effect for more than one hundred twenty days.

[19.2.16.14 NMAC – Rp 19 NMAC 2. SLO

16.13, 07/31/2002]

HISTORY of 19.2.16 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the New Mexico State Records Center under:

CPL 69-5, Rules And Regulations Concerning The Sale, Lease, And Other Disposition Of State Trust Lands, 09/02/69. CPL 71-2, Rules And Regulations Concerning The Sale, Lease, And Other Disposition Of State Trust Lands, 12/16/71. CPL 77-1, Rules And Regulations Concerning The Sale, Lease, And Other Disposition Of State Trust Lands, 01/07/77. Rule 16, General Application, 03/11/81; SLO Rule 16, Relating To Promulgation, Amendment And Repeal Of Rules, 10/02/87.

History of Repealed Material:

Rule 16, General Application – Repealed 01/20/84.

19 NMAC 2. SLO 16, Relating To Promulgation, Amendment And Repeal Of Rules – Repealed 07/31/02.

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

This is an amendment to 18.2.3 NMAC, Sections 9, 10, and 17.

18.2.3.9 REFERENCES TO CODE OF FEDERAL REGULATIONS: For the purposes of 18.2.3 NMAC, the term "Code of Federal Regulations" means the Code of Federal Regulations published by the Office of the Federal Register, National Archives and Records Administration in effect on ~~[October 1, 1999]~~ October 1, 2001.

A. Appendix A: Code of Federal Regulations, Title 49, Parts 1 to 99, Revised as of ~~[October 1, 1999]~~ October 1, 2001, published by the Office of the Federal Register.

B. Appendix B: Code of Federal Regulations, Title 49, Parts 100 to 185, Revised as of ~~[October 1, 1999]~~ October 1, 2001, published by the Office of the Federal Register.

C. Appendix D: Code of Federal Regulations, Title 49, Parts 200 to 399, Revised as of ~~[October 1, 1999]~~ October 1, 2001, published by the Office of the Federal Register.

[11-17-93; 2-14-95; 11-17-95; 4-30-97; 18.2.3.9 NMAC - Rp 18 NMAC 2.3.9, 6-29-00; A, 7/31/02]

18.2.3.10 **GENERAL:** The Department of Public Safety hereby adopts Parts 385, 387 and 390 of Title 49 of the Code of Federal Regulations (49 CFR Parts 385, 387 and 390 - Federal Motor Carrier Safety Regulations), with the following amendments:

A. Where the regulations refer to the United States Department of Transportation, and the transportation is intrastate, substitute the New Mexico Department of Public Safety.

B. Where the regulations refer to the Secretary of the United States Department of Transportation, and the transportation is intrastate, substitute the New Mexico Secretary of the Department of Public Safety.

C. Where the regulations refer to a Special Agent of the Federal Highway Administration, substitute all personnel safety certified and approved by the Director of the Motor Transportation Division of the Department of Public Safety.

D. Any part of 49 CFR not specifically adopted by these regulations is hereby deemed to be omitted and should not be considered to be part of these regulations.

E. Part 390.3 (b) and (c) are deleted.

F. Part 390.5, Definitions, is amended to read:

(1) "*Commercial motor vehicle*" means any self propelled or towed vehicle, other than special mobile equipment, used on public highways in commerce to transport passengers or property when:

(a) The vehicle is operated interstate and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more whichever is greater; or the vehicle is operated only in intrastate commerce and has a gross vehicle weight rating, or gross combination weight rating or gross vehicle weight or gross combination weight of 26,001 or more pounds whichever is greater; or

(b) Is designed or used to transport more than 8 passengers (including the driver); for compensation; or

(c) Is designed or used to transport more than 15 passengers, (including the driver) and is not used to transport passengers for compensation; or

(d) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, Chapter I, subchapter C;

(2) "*Special mobile equipment*" means a motor vehicle constructed from the ground up as machinery and not designed or used for the transportation of persons or property. Such equipment is operated on the highway only incidental to its use off road. The mounting of off road equipment on a standard truck or other chassis does not qualify a vehicle for an exemption as special mobile equipment."

(3) 390.19 is amended to add:
"Intrastate carriers operating commercial motor vehicles are required to apply for a New Mexico Safety Identification Number from the Motor Vehicle Division, New Mexico Taxation and Revenue Department beginning July 1, 2002."

(4) 390.21 is amended to add:
"Intrastate carriers operating commercial motor vehicles are required to mark their vehicles with the assigned New Mexico Safety Identification Number, preceded by the letters USDOT and followed by the suffix NM no later than January 1, 2003."
 [2-3-93; 11-17-93; 2-14-95; 11-17-95; 4-30-97; 18.2.3.10 NMAC - Rp 18 NMAC 2.3.10, 6-29-00; A, 7/31/02]

18.2.3.17 **ADOPTION OF FEDERAL HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS:**

The Department of Public Safety hereby adopts Parts 107, 171, 172, 173, 177, 178 and 180 of Title 49 of the Code of Federal Regulations (49 CFR 107 - Hazardous Materials Program Procedures, 49 CFR 171 - General Information, Regulations and Definitions, 49 CFR 172 - Hazardous Materials Table, Special Provisions, Hazardous Materials Communications Requirements and Emergency Response Information Requirements, 49 CFR 173 - Shippers - General Requirements for Shipments and Packaging, 49 CFR 177 - Carriage by Public Highway, 49 CFR 178 - Specifications for Packagings and 49 CFR 180 - Continuing Qualification and Maintenance of Packagings), with the following ADDITION to Section 173.33: Section 173.33(a)(4) "Cargo tanks" having a water capacity of 3,000 gallons or less, placed into service prior to April 1, 1995, operated by a solely intrastate motor carrier and used to transport Hazard Class 3 petroleum products do not have to meet the cargo tank specification requirements of 49 CFR 173.33(a)(1), 49 CFR 178.340 and 49 CFR 178.341 when operated under a valid permit issued by the Motor Transportation Division of the Department of Public Safety. This provision will expire April 1, 2005.

[2-3-93; 11-17-93; 11-17-95; 4-30-97; 18.2.3.17 NMAC - Rp 18 NMAC 2.3.17, 6-29-00; A, 7/31/02]

End of Adopted Rules Section

2002

SUBMITTAL DEADLINES AND PUBLICATION DATES

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